IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.1081 OF 2005.

Shri Revan Sambhu Kumkhar & ors. ... Appellants.
Versus.
Smt.Champabai Sadashiv Kumbhar & ors. ... Respondents.

Shri Dinesh W. Bhosale for the Appellants.

CORAM : ABHAY S.OKA, J.

DATED : 28th July, 2006.

P.C.:

1. Heard the learned Advocates for the Appellants. The Appellants are the original Defendants in a suit for partition. A contention was raised by the Appellants before the trial Court that the Plaintiff No.1 as well as Gayabai and Laxmibai have relinquished their share in the suit property. That contention has been negatived by both the Courts below.

2. The learned Counsel appearing for the Appellant submitted that on behalf of the Plaintiff a power of attorney holder, who is a stranger to the family, has given oral evidence. None of the Plaintiff has stepped into the witness box. He submitted that only on this ground the decree passed by the Courts below deserve to be set aside.

3. The appellants went before the Court with a plea that there is a surrender by the three daughters of Sambhu along with the present Plaintiff No.1. That plea

of surrender is negatived by both the Courts below. The Courts below have observed that no document evidencing relinquishment or surrender is produced. Once the case of oral surrender is rightly disbelieved by the Courts below, in the absence of any evidence on record to show such surrender or relinquishment, no fault can be found with the decree passed by the trial Court and confirmed by the Appellate Court. In such a situation evidence by the Plaintiff became irrelevant as on their own showing the Appellants admitted that the Plaintiff had a share and the case sought to be made out by them was that they have relinquished their share. No substantial question of law arises. Second Appeal is dismissed.

Judge.